IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 1020

JEFFERSON COUNTY, TENNESSEE,
Petitioner,

vs.

TENNESSEE VALLEY AUTHORITY
Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

REPLY BRIEF OF JEFFERSON COUNTY, TENNESSEE

It is respectfully submitted that the brief on behalf of the respondent is based upon evidence contained in parts of affidavits specifically excluded by the District Court and not now before this Court.

The District Court ruled:

> "By the terms of the contract between the plaintiff County and defendant Authority, it is provided that nothing in the contract releases or may be pled in defense to any action by the County.
>
> "The Court is therefore of the opinion that evidence of the extent and value of the work done by the defendant Authority under its contract with Jefferson County is inadmissible under the terms of the contract between the County and the Authority, and those parts of the affidavit of Frank W. Webster dealing with the char-

acter, value and extent of the work done by the Authority under the contract are excluded." (R. 42).

The Court then excludes from consideration affidavits concerning work done under the contract and sets out in detail those parts of the affidavits so excluded.

No exception to this ruling has been pressed and no error was assigned to this action. Therefore, evidence of the cost and character of roads rebuilt under the contract is not before this Court.

The question remains whether or not the Tennessee Valley Authority is liable for the taking of some 95 miles of road which cannot and will not be replaced and for the replacement of which no duty rests upon the County. (R. 42).

This was the question which was reserved in the contract. The theory then held by the respondent was that no liability existed for such a taking. (R. 10, Par. 10). The petitioner thought otherwise. (R. 10, Par. 10).

Each road taken by respondent is and was a unit. County roads are not built at one time or as a system. Where there is a replacement of a road taken, there is exoneration of the County from any duty to reconstruct and this satisfies the liability of the taking authority. No appellate court has gone further than this in any holding known to petitioner.

But where a road is taken and not reconstructed, exoneration can be brought about only as the value of the property taken is paid to the owner of the road.

The brief on behalf of respondent, to the extent that it relies upon matters excluded from the record as herein pointed out, should not be considered by the Court.

Respectfully submitted,

M. W. Egerton,
Attorney for Petitioner.